

**Borough of Wind Gap  
Wind Gap, Pennsylvania 18091  
610.863.7288**

## **Zoning Hearing Board Legal Notice**

**The Wind Gap Zoning Hearing Board will hold a public hearing Wednesday, February 3<sup>rd</sup>, 2010, at 7:30 p.m. at the Wind Gap Borough Hall, Council Chambers, 29 Mechanic Street, Wind Gap, PA to hear the following:**

**1. Case No. 01-2010**

**The application of Jack Muschlitz, Owner, of said property located at East West Street for (4) variances and (2) validity challenges. A variance request from Section 314.C.1.b.1 (maximum height of accessory structure); Section 702.G. (Joint Use, additional parking), Section 405 (Right-Of-Way Widths), and Section 307.F. (Minimum Yard Requirements) of the Zoning Ordinance. Also, a validity challenge or variance from Section 703.A.5. (Off-Street Parking), and from Section 503 (Steep Slopes) of the Zoning Ordinance. Additional Detailed Information may be obtained by contacting the Wind Gap Borough Zoning Office.**

**This property is in the I-ME (R-8 Amendment) Zoning District.  
Parcel ID E82010638.**

**Proof of publication requested:**

**Publish: January 18, 2010**

**Publish: January 25, 2010**

ZONING HEARING BOARD  
BOROUGH OF WIND GAP  
NORTHAMPTON COUNTY, PENNSYLVANIA

APPEAL NO.: 01-2010

APPELLANT: Jack Muschlitz and Waters Edge at Wind Gap, LLC

APPLICANT: Jack Muschlitz and Waters Edge at Wind Gap, LLC

LOCATION OF  
PROPERTY: East West Street, Wind Gap, Northampton County,  
Pennsylvania

OWNER: Jack Muschlitz

COUNTY UNIFORM  
TAX PARCEL NO.: E8-20-1-0638

OPINION

An Appeal was filed in the above-matter by the Appellant/Applicant, Jack Muschlitz, for property situate at East West Street, Wind Gap, Northampton County, Pennsylvania. This Appeal requests the following relief:

- (1) A variance from section 314.C.1.b.1 (maximum height of accessory structure);
- (2) A variance from section 702.G (joint use/additional parking);
- (3) A variance from section 703.A.5;
- (4) A variance from section 503.E (steep slopes); and
- (5) A variance from section 405 (right-of-way) In conjunction with this variance request, a variance is requested for Section 307.F (minimum yard requirements).

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Pursuant to proper legal notice, a public hearing in connection to this appeal was held on February 3, 2010, at 7:30 p.m. in Council Chambers, at Wind Gap Borough Hall, 29 Mechanic Street, Wind Gap, Northampton County, Pennsylvania.

2. Testimony and evidence were heard and received by Zoning Hearing Board members, Mark Sharp, Sam Nittle, and Debra Rosenberry. Robert Matlock sat as an alternate Zoning Hearing Board member.

3. The Zoning Officer Darlene C. Plank-Turlington was absent and the alternate Zoning Officer, Brian Pysher, appeared on her behalf. Mr. Pysher presented documents at the hearing and testified concerning the application. The Zoning Officer presented the application, the legal notices, Exhibit "1", and a list of residents within two hundred (200) feet that were notified as required by the Wing Gap Borough Zoning Ordinance and Northampton County Tax Records. The Zoning Officer also testified that the property was properly posted. The Zoning Officer also presented a document that she received of a land development plan of Waters Edge at Wind Gap, LLC prepared by Pennoni, preparers, surveyors, planners, and landscape architects. Drawing number CS-0201. The alternate Zoning Officer submitted a review letter by Lehigh Valley Planning Commission as Exhibit "2".

4. The subject premises is located at East West Street, Wind Gap, Northampton County, Pennsylvania, bearing Northampton County Uniform Tax Parcel identifier number E8-20-1-0638 and formerly situate in a I-ME zoning district now in a R-8 residential zoning district by zoning ordinance amendment bearing ordinance 469.

5. At the hearing, testimony was taken from the Applicant/Owner Jack Muschlitz and his engineer Rocco Caracciolo. Mr. Caracciolo is a professional engineer employed with Pennoni Associates, Inc.

6. The Applicant/Owners Engineering Firm, Pennoni Associates, Inc. prepared an land development plan titled "West Street Land Development". This land development plan was submitted by the alternate zoning officer as part of the Exhibit "1" package.

7. The proposed use is a land development of a residential community containing condominiums and townhouses. According to the plan, the land development will be private and a gated community governed by rules and regulations of a homeowners association. All proposed roadways and access drives are to be privately owned and maintained, including the proposed road that is identified as "Quarry Road."

8. The Land Development Plan proposes to develop an abonded quarry site for residential purposes. A residential community is a mix of buildings and townhouse form of residential units. A residential site proposes private road off of East West Street one being a private access drive A and another being Quarry Road which is a loop road around the development. Also, proposed on site is a community center building. The existing quarry water hole is to be fenced pursuant to the plan. The property borders East West Street and Longcore Road.

9. The property was formerly zoned in an I-ME zoning district. Wind Gap Borough Counsel amended the zoning ordinance and has located the subject premises in an R-8 zoning district. Wind Gap Borough Counsel, pursuant to ordinance 469, amended the Wind Gap Borough Zoning Ordinance to place the subject premises in the R-8 zoning district. Ordinance 469 was enacted on March 17, 2009.

10. The application that was filed by Waters Edge at Wind Gap, LLC requested five variances that are identified in correspondence from Pennoni Associates, Inc. dated February 13, 2010. Although the application referenced validity challenges, any reference ability challenges were withdrawn and removed from consideration by the Appellant owner. At the hearing, the representative of the Appellant Owner, Rocco Caracciolo, stated that the Appellant/Owner was not seeking validity challenges, and therefore any requests concerning validity challenges were not made and are not part of the application or decision by the Zoning Hearing Board.

11. The application indicates the present use is an abandoned quarry and the proposed use is a residential development which is to be developed pursuant to the proposed Land Development Plan that is under consideration by Wind Gap Borough Planning Commission and Wind Gap Borough Council.

12. The property is situated on the South side of East West Street, E8-20-1-0638. The property comprises 22.96 acres, pursuant to the application.

13. The Lehigh Valley Planning Commission submitted a review letter to the Zoning Officer, Darlene Plank-Turlington, dated January 20, 2010. The Lehigh Valley Planning Commission commented that although it supports the use of an old quarry site, it found the zoning ordinance to be inconsistent with the County Comprehensive Plan. The Lehigh Valley Planning Commission also indicated that without the standards of the remainder of the I-ME District or site plan standards, such as burning or additional landscaping on the site, the commission had reservations about placing a residential development in close proximity to land across Longcore Road that could be developed in the future for other permitted industrial uses in the I-ME district. With respect to the

applicant's request for a waiver to allow for 2:1 slope, the planning commission commented that the waiver should only be granted if the Applicant's engineer can demonstrate the erosion and slope failure would not occur from allowing steep slope in lieu of the 3:1 standard found in the borough sub-division and land development ordinance. The Lehigh Valley Planning Commission also commented that it believed the privately owned streets would reduce cartways and parking lanes should be consistent with the borough standards. The commission commented that the borough should ensure the proposed fences are satisfactory in height to prevent people from accessing the water filled quarry hole.

14. The applicant's witness, Rocco Caracciolo, PE of Pennoni Associates, Inc. presented a land development plan and correspondence dated January 13, 2010 addressed to the Zoning Officer. Mr. Caracciolo explained the plan and the purpose of the correspondence and the reasons for the variance request. Mr. Caracciolo identified the variance request in the letter as five which are hereinafter discussed.

15. Pursuant to the letter of January 13, 2010, Mr. Caracciolo requested a variance from Section 314.C.1.b (1) from the maximum height of an accessory structure of twenty (20) feet. The proposed structure is thirty five (35) feet. This is for the community center and the applicant wanted to match the architectural structure of the community center with the surrounding residences. The community center is to be used for the residents of the gated community. The legal notice that was submitted as part of the Zoning Officer Exhibit "1". There were five variance requests pertaining to six different sections of the Wind Gap Zoning Ordinance as contained in a letter of January 13, 2010 as revised on January 14, 2010.

16. Mr. Caracciolo's correspondence of January 13, 2010 requested a variance from Section 702.G relative to a joint use. This request is to provide for additional parking spaces for the community center. The community center will not be, according to Mr. Caracciolo, available to the general public and will serve only the residents of the proposed gated community. Mr. Caracciolo also requested a variance from Section 703.8.5 relative to design standards of off-street parking. Mr. Caracciolo, on behalf of the applicant, requested a variance to allow for traditionally accepted standards for single family dwellings and designated space in the garage/carport and one (1) designated space in the driveway.

17. Mr. Caracciolo's letter of January 13, 2010 also requested a variance from Section 503.E pertaining to steep slopes. Mr. Caracciolo represented to the Board at the hearing that the grading of the land area would not have greater than a five percent slope and the residential buildings, roads, walk areas, parking lots. All other areas would be in compliance with the Subdivision and Land Development Ordinance.

18. Mr. Caracciolo's letter of January 13, 2010 also requested a variance from Section 405 pertaining to establishment of future right-of-way for a private community. Mr. Caracciolo specifically requested a variance to allow a thirty three (33) foot private right-of-way in lieu of the fifty (50) foot right-of-way from Station 3+22 to Station 15+67 along the proposed Quarry Road. Mr. Caracciolo testified that the section of Quarry Road that requires the reduced private right-of-way is intended to be an access to parking areas for multi-family dwellings within the development. Further, the access to parking was extended to loop around the multi-family dwellings so that continuous, hard surface access will be available for fire department and emergency services. In conjunction with this

variance request, a variance was also requested under Section 307.F (minimum yard requirements) to allow a reduction of the minimum front yard from 25 feet to 8 feet with respect to the roadway loop identified on the plan portion of the property as a 33 foot private right-a-way.

19. There were several residents and property owners that attended the hearing and asked questions about the land development plan and variance requests and only one person testified. The person that testified was Kenneth Castle.

20. Mr. Caracciolo testified that the land ownership would be essentially condominium ownership and that there would be a homeowners association. The homeowner would own the building as a condominium and the surrounding areas would be maintained by the homeowners association.

21. The roadway loop is not intended to be a public road which serves the proposed buildings for circulation of fire protection and emergency services, but in fact, an access loop around the proposed buildings for circulation, fire protection, and emergency services.

22. The Zoning Hearing Board is empowered to grant a variance Section 804.E of the Wind Gap Borough Zoning Ordinance.

23. Under §804.E of the Zoning Ordinance, the Zoning Hearing Board is required to make certain requirements as follows:

- a. There are unique physical circumstances or conditions (including) irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical condition and not the circumstances or conditions



generally created by the provisions of this Ordinance in the neighborhood or district in which the property is located.

b. Because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance, and a variance is therefore necessary to enable the reasonable use of the property.

c. Such unnecessary hardship has not been created by the Appellants.

d. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.

e. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.

24. With respect to the variance requests under Section 314.C.1.b (1), Section 703.8.5, Section 503.E, Section 405, and Section 307.F as set forth in the plans, the testimony and accompanying letter of January 13, 2010 from Pennoni Associates, the Board finds the following:

a. The Appellant/Owner presented sufficient evidence that there was unique circumstances or conditions to the property as required under §804.E concerning the above variance request.

b. The Board finds that the Appellant/Owner presented satisfactory evidence that there is no possibility that the property can be developed in strict conformity with the provisions of the Zoning Ordinance.

c. The Board finds that the Appellant/Owner presented satisfactory evidence that the unnecessary hardship was not created by the Appellant/Owner.

d. The Board finds that the variance would not alter the essential character of the neighborhood or district in which the property is located.

e. The Board further finds that the variance requested represents the minimum variance that will afford relief and will represent the least modification possible of the regulations in issue.

25. With respect to the variance request under Section 702.G for joint use/additional parking, the Board finds the following:

a. The Appellant/Owner did not present sufficient evidence to establish unique circumstances or conditions to the property as required under Section 804.E concerning the above variance request. The Appellant Owner failed to present adequate incredible testimony to justify that there were unique physical circumstances or conditions that the property has to require a variance under Section 702.G. The testimony at the hearing amply supported the finding that the Applicant could comply with the necessary requirements as set forth in Section 702.G.

b. The Appellant/Owner did not present satisfactory evidence that there is no possibility that the property can be developed in strict conformity with the provisions of the zoning ordinance. The Appellant/Owner did not present adequate incredible testimony to justify a finding that the property could not be developed in strict

conformity with the provisions of the Zoning Ordinance relative to the requirements of Section 702.G.

c. The Appellant/Owner did not present satisfactory evidence that the unnecessary hardship was not created by the Appellant. The Board finds that the hardship as referenced in paragraph C of the Appellant/Owner was in effect created by the Appellant/Owner to present was in effect was created by the Appellant/Owner.

d. The variance would alter the essential character of the neighborhood pursuant to where the property is located. Without the Appellant/Owner meeting the necessary requirements of Section 702.G, the Court finds that the essential character of the neighborhood would be altered in its lack of conformity with the standards at set forth in Section 702.G.

e. The variance request does not represent the minimum variance that will afford relief and present the least modification possible of the regulation and issue. The Board finds that based on the testimony presented, that this is certainly not the minimum variance that would afford relief as requested by the Appellant/Owner.

ORDER

AND NOW, this 19th day of March, 2010, the following Order is entered.

(A) The variance relief under Section 314.C.1.b.1 maximum height of accessory structure variance and Section 703a.5 off street parking and Section 503(steepest slope), Section 314.C.1.b.1 (maximum height of accessory structure) and Section 307.F minimum yard requirements as listed on the Plan and represented by the Appellant/Owner and the Engineer by is hereby granted under the following conditions:

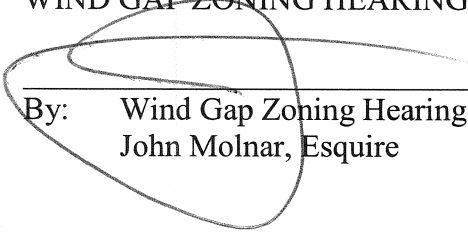
(1) With regard to the steep slope, there shall be no man-made slate piles within the residential land uses.

(2) The Borough Engineer shall approve the remaining man-made slate outcroppings so that the remaining man-made slate outcroppings do not present safety hazards to the residential land use.

(3) Further, the Borough Engineer shall approve the final grading of the land so that the slope within the residential land uses is less than five (5) percent. The residential land uses shall be buildings, sidewalks, parking lots and roads. All other areas shall be in conformity with the Subdivision and Land Development Ordinance.

(B) The variance relief requested under Section 702.G is hereby denied.

WIND GAP ZONING HEARING BOARD

By:  Wind Gap Zoning Hearing Board Solicitor  
John Molnar, Esquire

Dated: March 19, 2010